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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1926

No. ~~547~~ 103

JOHN JAMES JACKSON, WILLIAM A. WILSON, CHRISTOPHER R. SHOTTON, ET AL., PETITIONERS,

vs.

STEAMSHIP "ARCHIMEDES," LAMPORT & HOLT LINE, LTD., CLAIMANT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 2, 1926

CERTIORARI GRANTED OCTOBER 25, 1926

(32,114)

(32,114)

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

JOHN JAMES JACKSON et al., Libelants-Appellant,

against

Steamship "ARCHIMEDES," LAMPORT & HOLT LINE, LTD., Claimants-Respondents

Writ of Error to the District Court of the United States for the Southern District of New York

Transcript of Record—Filed Jan. 30, 1926

[fol. 1] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

JOHN JAMES JACKSON et al., Libelants,

against

Steamship "ARCHIMEDES," LAMPORT & HOLT, LTD., Claimant

STATEMENT OF CASE

Filed libel July 27, 1922.

Filed claim and stipulation for costs and value.

July 27, 1922, filed answer.

June 10, 1925, case called and tried before Hon. Augustus N. Hand, D. J.

July 29, 1925, opinion filed dismissing libel with costs.

September 30, 1925, final decree filed dismissing libel with $61.60 costs.

December 15, 1925, filed notice of appeal and asignments of error.

[fol. 2] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL

SIRS: Please take notice that the above named libelant hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the decree of the United States District Court for the Southern District of New York, heretofore entered herein on or about the 30th day of September, 1925, dismissing the libel herein; and the libelant appeals from each and every part of said decree, as well as from the whole thereof.

Yours, etc., Silas B. Axtell, Proctor for Libelant. Office & P. O. address: 11 Moore Street, New York City.

Dated New York City, N. Y., December 14th, 1925.

Burlingham, Veeder, Masten & Fearey, Proctors for Claimant. Office & P. O. Address: 27 William Street, New York, N. Y.

[fol. 3] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR

The libelant for his assignment of errors which he alleges were committed by the District Court herein, respectfully shows:

1. That the court erred in holding that Section #11 of the Seamen's Act of March 4, 1915, as amended by the Jones Act of June 5, 1920, did apply to wages paid on a foreign ship in advance of the time earned.

2. That the court erred in holding that Section #11 of the Seamen's Act of March 4, 1915, as amended by the act of June 5, 1920, known as the Jones Act does not apply or did not apply to the facts in this case, this being a suit where the court properly took jurisdiction to enforce a demand for half wages made by the libelants under the provisions of Sec. 4530 U. S. Revised Statutes.

3. That the court erred in holding that the Law of Great Britain was exclusively applicable to advances made on a [fol. 4] British vessel in a British port where she had come in the United States for the purpose of trade and the court had taken jurisdiction in Admiralty of the vessel upon a libel which alleged that a demand for half wages had been made upon the master of the vessel while she was within the United States and within the jurisdiction of this court for the purpose of discharging and loading cargo and under circumstances that made Sec. 4530 of the U. S. Revised Statutes applicable.

4. That the court erred in dismissing the libel.

5. That the court erred in refusing to hold the vessel liable for the libelants' claim for wages and in refusing to assess libelants' claim for waiting time under the provisions of 4529 of the U. S. Revised Statutes.

Silas B. Axtell, Proctor for Libelant-Appellant.

Office & P. O. Address: 11 Moore Street, New York, N. Y.

[fol. 5] IN UNITED STATES DISTRICT COURT

LIBEL

To the Honorable Judges of the United States District Court for the Southern District of New York, in Admiralty:

The libel of John James Jackson and four others in a cause of action, civil and maritime, for wages and for waiting time against the S. S. Archimedes, respectfully alleges:

Action under special rule for seamen to sue without security or prepayment of fees for the enforcement of the laws of the United States, common and statutory, for the protection of the health and safety of seamen at sea.

First. That the S. S. Archimedes is now within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Second. That on or about the 19th of May, 1922, libelants whose names are hereinafter set forth, signed regular British merchant shipping articles, at the port of Manchester, England, for a voyage to the United States and return, for a period not exceeding two years, at the respective rates of wages and in the respective capacities hereinafter set forth.

[fol. 6] Third. That thereafter the said S. S. Archimedes arrived at the port of New York for the purpose of loading and/or delivering cargo, and five days thereafter, libelants duly demanded one-half the amount due them for wages actually earned, from the master of said steamship, and the said master failed and neglected to comply with said demand.

Fourth. That by reason of said failure to comply with said demand, libelants are entitled to full payment of all the wages earned, the amounts of which are hereinafter set forth opposite the names of the libelants.

Fifth. That by reason of said failure to pay, libelants are entitled to a sum equal to two days pay for each and every day during which payment is withheld beyond the 8th of June, 1922, the date upon which demand for half wages was made.

Sixth. The names of the libelants, the respective capacities in which they signed the shipping articles, the respective rate of wages at which they signed, the amounts which became due by reason of the failure to comply with the half wages demand, are hereinafter set forth as follows:

Names	Capacity	Rate of wages	Due
William A. Wilson	A. B.	£10	£5, 2s, 9d
John James Jackson	A. B.	£10	£6, 10s
Christopher R. Shotton	A. B. & Q. M.	£10, 10s	£6, 11s
William Lewis	A. B.	£10	£6, 1s
Thomas W. Hooper	A. B & Q. M.	£10, 10s	£5, 9s, 9d

[fol. 7] Seventh. That all and singular the foregoing premises are true and within the maritime and admiralty jurisdiction of the United States and of this honorable court.

Wherefore libelants pray that process in due form of law, according to the course of this honorable court, in causes of admiralty and maritime jurisdiction may issue against the S. S. Archimedes and that all persons claiming any right, title or interest therein may be cited to appear and answer all and singular the matters aforesaid and that this honorable court may be pleased to decree the payment of your libelants' claim in the sum of $155.00 and that the said vessel may be sold and condemned to pay the same, and waiting time as prayed for and the libelants have such other and further relief as may be just and proper.

Silas B. Axtell, Proctor for Libelants.

Office and P. O. address: 11 Moore Street, New York City.

Duly sworn to by John James Jackson et al. Jurat omitted in printing.

[fol. 8] IN UNITED STATES DISTRICT COURT

ANSWER

To the Honorable the Judges of the United States District Court for the Southern District of New York:

The answer of Lamport & Holt, Ltd., claimant of the steamship Archimedes, as the same is proceeded against on the libel of John James Jackson and others in an alleged cause of action for wages and waiting time, civil and maritime, alleges as follows:

First. The claimant admits the allegation of the first article of the libel.

Second. It admits the allegations of the second article [fol. 9] of the libel, except that it denies that the libellants Christopher R. Shotton and Thomas W. Hooper signed in the capacities and at the rate of wages set forth in the libel.

Third. It admits that the steamship Archimedes thereafter arrived at New York for the purpose of loading and delivering cargo, but it denies the other allegations of the third article of the libel.

Fourth. It denies the allegations of the fourth article of the libel.

Fifth. It denies the allegation of the fifth article of the libel.

Sixth. It admits that the libellants John James Jackson, William A. Wilson and William Lewis signed the shipping articles in the respective capacities and at the rate of wages set forth in the libel, but it denies the other allegations of the sixth article of the libel.

Seventh. It admits the jurisdiction and denies the other allegation of the seventh article of the libel.

Eighth. Further answering, the claimant alleges that on or about May 19, 1922, at Manchester, England, the libellants, British subjects, signed regular shipping articles before the British Shipping master for a round voyage from Manchester to New York on the Archimedes, a British [fol. 10] steamer flying the British flag. Said contract was a British contract and libellants by entering into the service of said British steamer subjected themselves to the British law and their rights are governed thereby. The Archimedes sailed on said voyage and arrived at New York, June 1, 1922. On June 3 each of the libellants demanded and received from the master of said steamer wages in excess of one-half part of the balance of his wages then earned and remaining unpaid.

Notwithstanding demand and payment as aforesaid, each of the libellants at 10.15 p. m. June 8, while said steamer still lay at New York, made a second demand on the master for wages, each libellant demanding an amount exceeding one-half part of the balance of his wages then earned and remaining unpaid. Previous to said demand the libellants had packed up their belongings and had prepared to leave the steamer. Said demand was illegal and made in bad faith, and on refusal by the master to comply therewith the libellants, without leave, wrongfully quit the ship and failed and neglected to return and became deserters and were duly declared to be such by the master. By reason of the premises the libellants forfeited all wages and all claims whatsoever against said steamer and/or the claimant.

Wherefore claimant prays that the libel herein be dismissed with costs.

Burlingham, Veeder, Master & Fearey, Proctors for Claimant.

[fol. 11] *Duly sworn to by Alfred H. Lloyd. Jurat omitted in printing.*

[fol. 12] IN UNITED STATES DISTRICT COURT

[Title omitted]

Statement of Evidence

New York, June 10, 1925.

APPEARANCES OF COUNSEL

Silas B. Axtell, Esq., for libelant.
Messrs. Burlingham, Veeder, Masten & Fearey (Mr. Dean) for claimant.

The claims of the libel and answer are stated.

OFFERS IN EVIDENCE

Mr. Axtell: I offer in evidence the depositions of: William A. Wilson, Christopher R. Shotten, William Lewis, Thomas A. Hooper, and John James Jackson.

Mr. Dean: I offer in evidence the depositions of: George Blacker, master of the Archimedes, and the deposition of John Cusick, the boatswain of the Archimedes, together with the exhibits offered in evidence when those depositions were taken.

Mr. Dean: Will Mr. Axtell concede that at the time the libelants signed these shipping articles the practice of pay-[fol. 13] ing advances to a seaman was usual and customary, and not forbidden by the laws of Great Britain?

Mr. Axtell: Yes.

Mr. Dean: I wish to read into the record part of section 221 of the British Merchant Shipping Act of 1894, as follows:

"If a seaman lawfully engaged or an apprentice to the sea service, commits any of the following offences he shall be liable to be punished summarily as follows:

(A) If he deserts from his ship he shall be guilty of the offence of desertion and be liable to forfeit all or any part

of the effects he leaves on board, and of the wages which he has then earned."

The Court: I will consider the matter.

TESTIMONY

[Title omitted]

Testimony of William A. Wilson, Thomas W. Hooper, John James Jackson, Christopher R. Shooton, William Lewis, taken on behalf of themselves, before Anna [fol. 14] Kiefer, a notary public, at the office of Silas B. Axtell, 11 Moore Street, New York City, on the 16th of June, 1922

Appearances: Silas B. Axtell for libellants; Burlingham, Veeder, Masten & Feary for respondent (Mr. Dean, of counsel).

Signing, certification and filing of minutes is hereby waived, same to be taxable as costs.

All objections reserved until the trial except as to form of questions and answers.

NOTICE OF TAKING DEPOSITIONS

[Title omitted]

Please take notice that the testimony of John James Jackson, William A. Wilson, C. R. Shotton, William Lewis, Thomas W. Hooper, witnesses on behalf of themselves herein will be taken by deposition de bene esse, pursuant to [fol. 15] Section 863 and 864 of the Revised Statutes of the United States and the Acts of Congress amendatory thereof and supplementary thereto, before Anna Kiefer, Notary Public or before some other officer authorized by law to take depositions at 11 Moore St. Borough of Manhattan, City of New York on the 12th day of June, 1922 at 4 o'clock P. M. That said testimony is taken because said witness

is a seaman and is leaving or intending to leave the jurisdiction of this court.

Silas B. Axtell, Proctor for Libelants, 11 Moore St., New York, N. Y.

Dated June 9th, 1922.

Lamport & Holt Line, Ltd., Proctor for Respondent, 42 Broadway, New York City.

WILLIAM A. WILSON, being duly sworn, deposes and testifies as follows:

Direct examination.

By Mr. Axtell:

Q. You are one of the libelants?

Mr. Dean states that the other men ought to stay out of the room while this man testifies. Mr. Axtell responds that these men are all parties to the action and have a right to be present, but if he desires them to be removed, he will ask them to step out.

[fol. 16] Q. You are one of the parties to this action. We call them libelants?

A. Yes.

Q. How old are you?

A. 19.

Q. Where were you born?

A. London.

Q. Your home is in England?

A. Yes.

Q. Where is it now?

A. West Street, 507 West Street.

Q. Are you going to stay over here in this country?

A. Yes.

Q. What were you on the Archimedes?

A. A. B.

Q. Where did you sign?

A. Manchester.

Q. At what rate?

A. Ten pounds a month.

Q. No bonus?

A. No.

Q. What date did you sign?

A. I cannot be certain of that.

Q. Have you any memorandum or paper to remind you or refreshen your recollection?

A. It was the 19th of May, 1922.

Q. Did you get any advance on joining?

A. Two pounds.

Q. To whose order was the advance note made?

A. Thompson. Trafford Road, Manchester.

Q. Who is he?

A. He deals in clothes for sailors.

Q. You got the two pounds before you earned it or after?

A. Before.

Q. Had you done any work at the time you got the £2?

A. No.

Q. You went on the ship and continued up to what time?

A. Up until half past ten on the 8th of June.

[fol. 17] Q. What happened then?

A. We went to the captain and made a demand for half pay and handed him these slips.

Q. Have you got a slip with you?

A. Yes.

Q. Is that your signature on that?

A. Yes.

Q. Did you hand this to the master?

A. Yes.

Q. What did he say?

A. He would not have anything to do with it. He said nothing. He just put it aside.

Q. Will you just relate what you said to him exactly or what anybody else said in your presence about half wages.

A. In the first place; we all walked in the saloon and saw the captain alone.

Q. Who are all?

A. Lewis, myself, Shotton, Hooper, Jackson. Lewis told the captain that we wanted some more money. He said that he had already given us money and he would not give

it again so we handed him those notes and demanded half pay. Well, he refused to have anything to do with it at all.

Q. Did he say anything?

A. He just said that — was giving no more money out.

Q. Did he read the advance note?

A. He looked at Lewis's note and gave it back to him.

Q. Do you know whether he read it?

A. He had it in his hand reading it.

Q. How long did he have it in his hand?

A. A matter of a few seconds.

Q. Did he look at it?

A. Yes.

Q. You could see that his eyes were focused on the note?

A. Yes.

Q. What did he do or say?

[fol. 18] A. He just handed the note back and said he was giving no more money and would have nothing to do with it and then we each offered the notes and he just waved them aside.

Q. You all did that?

A. Yes. Then, I showed him this paper and asked him if he would listen to it while I read it.

Q. Will you read what you read to the captain?

To whom it May Concern:

This is to certify that under the laws of the United States, a seaman on foreign vessels while in the waters of the United States, for the purposes of loading or discharging cargo, may demand and receive half wages due and unpaid. If the demand is refused the contract is ended and the seaman may leave the vessel without interference, taking all of his belongings with him including his passport, discharge books and other things. The act is binding as the law of the place where the demand is made and is not governed by any foreign law as all treaties with foreign countries have been rescinded by the United States.

A. I read as far as there and he stopped me. He said, that was only the American law for American ships. That has nothing to do with British ships. Then Lewis asked him for a pass for our bags.

Q. What did he say?

A. He said he would not give us them and then he turned his back on us and walked away.

[fol. 19] Q. Did you work regularly from May 19th to June 8th?

A. Yes.

Q. Did you draw any cash after you left England; that is money that you had already earned?

A. I did. 10 shillings in tobacco and $6.00 cash.

Q. How much is 10 shillings; half a pound I suppose?

A. I cannot say exactly. It would be about 2.25.

Q. Exchange 4.50?

A. Yes.

Q. Then $8.25 is the sum that you had received in cash besides your advance note?

A. Yes.

Q. How much balance of wages did you figure was the total sum owing to you at the time you made the demand for half wages?

A. Not counting the advance, £3, 18s.

Q. That is the total or half?

A. That is the total, not counting the advance.

Q. Did you get your bag off the ship?

A. Yes, after a bit of trouble. We took them ashore that night at half past ten but we could not get them out of the gates because the Customs would not pass them.

Q. Why?

A. Because the Customs evidently don't pass bags after a certain time or something.

Q. Did you get them out later?

A. We took them back aboard that night.

Q. Did you stay aboard that night?

A. We stayed aboard and we brought our bags ashore in the morning, eight o'clock.

Q. Did you get your discharges?

A. No.

Q. Where are those discharges?

A. I should say at the Consul's office.

[fol. 20] Q. Where did you leave them?

A. On the ship.

Q. In whose possession?

A. The captain.

Q. Did you demand them before you left the ship?
A. No.
Q. Was subsequently a written demand made in your behalf, that you know of?
A. Yes.
Q. Have you received them since?
A. No.
Q. Is it possible for you to find employment as a seaman without your discharge books?
A. I should say not. Not at present.
Q. Are you looking for employment as a seaman?
A. No.
Q. Are you at present employed?
A. Yes.
Q. What doing?
A. Working for some painting company.
Q. Will you go to sea as soon as you get your discharge books?
A. Yes.
Q. You intend to go on American or British ships?
A. American.
Q. You intend to take out your papers?
A. Yes.
Q. That is your intention papers?
A. Yes.
Q. Did you load or discharge any cargo here?
A. Yes.
Q. Which?
A. Both discharge and load.
Q. Where is the vessel going from here?
A. Manchester.
Q. When did she sail?
A. Last Saturday.

Cross-examination.

By Mr. Dean:

Q. When did the Archimedes arrive here?
A. I cannot say what date it was.
[fol. 21] Q. How long had she been in port before you made the demand on the master?
A. Six days. Either six or seven. I cannot be certain.

Q. How long after you signed articles before you were on the ship and commenced working?

A. Two days. Not a full two days.

Q. Then you commenced work on the 21st?

A. Yes.

Q. I understood you to say that you got $6.00 cash on account of wages after you arrived at New York?

A. Yes.

Q. How long is that after the ship arrived?

A. Two days.

Q. Were you paid in dollars or pounds?

A. Dollars.

Q. Did you ask for any more money at the time you were paid?

A. No.

Q. What was you- slope account?

A. Ten shillings, tobacco.

Q. I note on Plaintiff's Exhibit I, that you have £2, 9s or equivalent. How did you arrive at £2, 9s? Tell me in your own words how you figure it that £2, 9s was half pay.

A. Well, there was three weeks aboard the ship, 6 and 8 a day. That was £3, 6s a week. That is £10 for the three weeks; deduct $6 and 10s.

Q. You did not deduct the advance?

A. No.

Q. Why?

A. Because I could make that demand and not count the advance in. The advance is void in this country.

Q. You figure that you worked three weeks and you say that amounted to £10.

A. Yes.

Q. I thought you signed on at wages at £10 a month?

A. Yes.

[fol. 22] Q. Then 3 weeks would not be £10, would it.

A. I just made a mistake. It should have been £7.

Q. Then you calculate that you had earned £7 up to June 8th?

A. Yes.

Q. Who gave you this slip marked Plaintiff's Exhibit 1?

A. Mr. Axtell.

Q. Who prepared the statement, part of which you read to the master at the time you made the demand?

A. Mr. Axtell.

By Mr. Axtell: These men came in for advice and said that the captain would not give them any money and I told them they had better ask for half wages. They already knew something about half wages and I thought the master might not, so I wrote this letter so that they could show it to him so that he would understand and be apprised fully of the nature of the law.

By Mr. Dean:

Q. Did you, yourself come down to see Mr. Axtell to find out what your rights were?

A. Yes.

Q. On what date, did you come down?

A. 8th of June.

Q. On how many occasions did you make a demand on the master for half pay?

A. Just once.

Q. Was that before or after you came down to Mr. Axtell's office?

A. After.

Q. What was the occasion of coming to his office?

[fol. 23] A. Well, we all wanted some more money. We had already $6.

Q. I understood you to say that you did not ask for any more than $6, at the time you got the six dollars?

A. Yes, but we wanted some more later on.

Q. When later on, did you ask for more money?

A. We did not ask for any more because on the previous trip we had gone up twice to the captain for money and he told us never to come up again.

Q. On the second occasion?

A. On the previous trip on the same ship.

Q. Did you leave the ship on the 8th?

A. On the 9th, the morning of the 9th.

Q. Did you get permission from the master to leave?

A. No.

Q. You took the baggage off, intending not to go back to the ship?

A. Yes.

Q. Did you make any complaints to the British Consul about your difficulty?

A. No.

Q. Have you seen the British Consul since the ship came into port?

A. No.

Q. Did you do any work at all on the 8th?

A. Yes, worked all day on the 8th.

Q. How did you get out to Mr. Axtell's office. What time?

A. We worked half a day and we go on the other half.

[fol. 24] THOMAS HOOPER, being duly sworn, deposes and testifies as follows:

Direct examination.

By Mr. Axtell:

Q. What is your name?

A. Thomas Hooper.

Q. How old are you?

A. 33.

Q. You are an Englishman?

A. Yes.

Q. Where is your home?

A. Manchester.

Q. You came over on the Archimedes?

A. Yes.

Q. When did you join?

A. The 17th.

Q. What rate of wages and what capacity?

A. £10, 10s. A. B. seaman and quartermaster.

Q. Did you get any advance on joining?

A. Yes, £4.

Q. Was that in the form of a note?

A. Yes.

Q. Whose order?

A. Sister.

Q. What was the form of the note. To whose order was the note drawn? If it was to your sister, it's a valid payment. Was it to your sister?

A. It was to myself.

Q. If you don't know, say so?

A. The note was payable to Thomas William Hooper.

Q. As part wages?

A. Yes.

Q. Where did you cash it?

A. I did not cash it. I gave it to my sister. Endorsed it to my sister.

Q. Why did you not take an allotment?

A. Because, I am single, not married. I am not required to leave any allotment.

Q. Your sister actually got this money?

A. I could not swear to that.

[fol. 25] Q. You gave it to her?

A. Yes.

Q. Well, did you draw any cash money after the voyage commenced?

A. I drew money on this side.

Q. How much?

A. $6.00.

Q. When did you ever make any demand for half wages?

A. On the 8th of June.

Q. What took place, where did it happen and what was said?

A. We went up and asked the captain if he would give any sub.

Q. What does that mean?

A. Another draw or payment.

Q. That is an expression that means draw on account of wages?

A. Yes.

Q. What else did you say to him?

A. Well, he refused and I turned around to him. I said, well, will you give me half of what is due me and he said "No, I won't give you a cent."

Q. Anybody else present at the time?

A. Yes, there was four of them or five rather.

Q. Who were?

A. Shotten, Wilson, Jackson and Lewis. The other fellow left the ship.

Q. Did they say anything to the captain at this time?

A. Yes, they said the same as myself.

Q. They wanted half pay?

A. Yes.

Q. How much money did you have coming to you at the time you demanded these half wages?

A. I figure it £2, 15s. 3d.

Q. That is what you figure was due you?

A. Yes.

Q. Is that counting in advance?

A. Not counting the advance.

[fol. 26] Q. Did you join the ship on May 19th, the same day as the other man?

A. Yes.

Q. May 19th to June 8th is how many days?

A. 21 days.

Q. At £10 a month, how much is that?

A. £7, 7s.

Q. And you had drawn $6.00? About $31.50 you had earned?

A. Yes.

Q. At the time you demanded half wages?

A. Yes.

Q. You had drawn $6.00 of that?

A. Yes.

Q. Which would leave $25.50?

A. Yes.

Q. And if you did not count the advance then, you would have half wages due you of $12.25?

A. Yes.

Q. I would like Mr. Axtell to state what the rate of exchange is.

A. About 4.50.

Q. Do you know the exchange that prevailed at that time?

A. No, could not say. Between 4.45 and 4.50 I think.

By Mr. Axtell:

Q. Did you get your clothes?

A. Yes, I got them.

Q. Did you get your discharge book?

A. No, I did not.

Q. Did you ask for it?

A. I asked for it but they would not give it to me.

Q. Who?

A. The captain.
Q. When?
A. The same night when he refused to give me the book. I said, give me the book and I will go ashore.
Q. What did he say?
A. He said, I will have nothing to do with you.
[fol. 27] Q. When you asked him for your discharge book, what did he reply?
A. He said I could not have it.
Q. Do you know where it is now?
A. No.
Q. When did you last see it?
A. I last saw it on the 17th of June. When I signed on the ship, I gave it to him.
Q. To who?
A. The Captain.
Q. Have you seen it since you gave it to the captain?
A. No, I have not seen it.
Q. Are you going to stay in this country or are you going back to England?
A. I am going to stay in this country.
Q. Are you going to continue going to sea?
A. Yes.
Q. What kind of ships?
A. American.
Q. Are you going to get your papers?
A. I haven't got them yet.
Q. Have you any intention on the subject?
A. Yes, I will get my papers at the first opportunity.

Cross-examination.

By Mr. Dean:

Q. How long have you been going to sea.
A. Twenty years on these ships.
Q. British ships all the time?
A. Yes.
Q. When did you decide to become an American seaman?
A. Only this voyage. I got fed up with sailing on English ships.
Q. Did you owe the ship anything for slops at the time you left?

A. Yes, ten shilling tobacco.

Q. Have you heard from your sister since you came across?

A. No.

Q. At the time you got the $6.00 at New York, did you [fol. 28] ask for any more than that at the time?

A. No, I did not. I just asked for $6.00.

Q. Who paid you the $6.00?

A. The captain, himself.

Q. How much was the $6.00 equal to in English money at the rate of exchange prevailing on that date?

A. £1, 6s, 6d.

Q. Did you come down here to Mr. Axtell's office on the day you made the demand on the captain, on June 8th?

A. Yes.

Q. What time in the morning did you come down?

A. 11 o'clock.

Q. How long did you stay down here?

A. About an hour waiting to see him.

Q. How long were you in town that day?

A. I got back aboard the ship again about 2 o'clock in the afternoon.

Q. What was the occasion for your visit to Mr. Axtell's office that day?

A. I got no satisfaction from the captain. I could not get any money from him.

Q. When did you make the demand? Did you make the demand before or after you came to Mr. Axtell's office?

A. Before.

Q. Did anybody show any slips to the captain when you made the demand?

A. The same day when we went to the office. I asked him but he refused me. I got the slip and went back to him and presented the slip. We was waiting for him aboard the ship all the afternoon. We did not see him until half past ten.

Q. Did you draw any pay besides the £4 while the ship was at Manchester or during the voyage across?

A. No.

[fol. 29] When did you leave the ship at New York for good?

A. The 9th.

Q. Did you take your baggage and all your things with you?

A. We wanted to take it with us but they would not let us have it until the 9th.

Q. You left on the ninth?

A. Yes.

Q. Taking all your belongings with you?

A. Yes.

Q. Did you intend to go back on the ship or quit her for good?

A. Quit her for good.

Q. Did you ask the master for permission to quit?

A. I asked the captain for a pass and he refused to give me one.

Q. Did you see the British Consul?

A. No, I did not bother with the British Consul.

Q. British seamen usually go to see the British Consul?

A. Yes, but the British seaman does not get satisfaction from the British Consul. He only gets abuse.

Q. Did you go on the ship at Manchester the same day you signed articles?

A. No, the following morning. 4 o'clock.

Q. When did you take the advance, the day you went on board?

A. Yes.

Q. Not the day you signed on?

A. No.

Q. Did you give this notice to the captain that you had with you at the time?

A. Yes.

Q. Is that your writing?

A. Yes.

Q. You showed him that, did you?

A. Yes.

[fol. 30] JOHN K. JACKSON, being duly sworn, deposes and testifies as follows:

Direct examination.

By Mr. Axtell:

Q. What is your name?
A. John K. Jackson.
Q. Where are you from?
A. Australia.
Q. Are you a sailor?
A. Yes.
Q. Deck Department?
A. Deck Department.
Q. How old are you?
A. 27.
Q. British subject?
A. Yes.
Q. Were you a member of the crew of the Archimedes?
A. Yes, sir.
Q. At what rate of wages?
A. £10, 10s, a month.
Q. Where did you join her and on what date?
A. Manchester. I cannot tell you exactly the date.
Q. With the other fellows?
A. Yes.
Q. Same time?
A. Yes.
Q. Did you get any advance on joining?
A. £4.
Q. What form of an advance was it?
A. Just a piece of paper with Lamport & Holt Line on the top, and I had to take that to somebody to cash it.
Q. Who did you take it to?
A. Fellow by the name of Thompson.
Q. What is his business?
A. Seamen's outfit for clothes.
Q. Did he give you cash for it or what?
A. Yes, he gave me about £2, 15s.
[fol. 31] Q. For £4 advance?
A. Yes.
Q. What became of the rest of it?

A. They stopped that for cashing the note.

Q. You mean he charged £2?

A. No, thirty shillings.

Q. For cashing the £4 note?

A. Yes.

Q. Is that a contract? Is that the customary charge?

A. Yes, that is the customary charge. It is this way. If he would not cash it you would have to take it to somebody else and then you would not get it cashed at all because if nobody cashes that note and you do not go in the ship, they lose the money.

Q. Are you married or single?

A. Single.

Q. Where has your home been before?

A. Melbourne. Victoria Ave.

Q. Did anything happen in New York with regard to wages?

A. No, we just went in for some money and he gave me $6 or $7. $7 I think it was and then we wanted some more and he would not give it. We wanted half of what was due us.

Q. What did you say to him about it?

A. Well, I took him down to see the note.

Q. That paper you have in your hand?

A. Yes.

Q. Did you show him that?

A. Yes.

Q. What did you say to him at the time?

A. We went for more money first and he would not give it to us. He told us he would not give us one draw and of course we came down to you that day and you told us how to go about it. You gave us this note and I told him about it.

[fol. 32] Q. I told you to demand half wages?

A. Yes.

Q. I gave you that note?

A. Yes.

Q. What day did you come to me? The same day you demanded the money or before?

A. After we demanded the money and he would not give it to us.

Q. Were you here before you demanded half wages? You came here before?

A. Yes. It was the same day. The same morning he told me to go ashore, the chief officer and he would give me the money. That was when I turned to in the morning.

Q. What did the captain say when you showed him that note?

A. He would not take any notice of it.

Q. Who was there?

A. The whole crowd.

Q. Did any of them say anything about it?

A. Yes, they did the same as me. They showed the captain the note.

Q. They wanted half wages?

A. Yes.

We will put the note in evidence.

Q. After that, what did you do?

A. Well, I told him I was going ashore so I took my bag and I took it ashore but when I got to the gate, the custom house officer passed it and said it was O. K. but the watchman on the gate, he would not let me pass with the bag unless I had a pass from the chief officer or captain of the ship so I went to them but they would not give me one so I took the bag back aboard the ship and slept there that night and went ashore in the morning.

Q. What did you do then?

[fol. 33] A. The custom fellow passed the bag again and the watchman would not let us go.

Q. Who employs the watchman?

A. Lamport & Holt or White Star, Pier 58.

Q. Did he have a uniform?

A. Yes, just the same as a policeman.

Q. Nothing to indicate what line he worked for?

A. He had a badge on.

Q. Did the badge indicate who he was employed by?

A. No, he had a number on it.

Q. Was he a policeman?

A. No, he was just a watchman.

Q. After your clothes were held up, what did you do next?

A. I came down to see you but you was out. I saw Mr. Axtell, Jr., and he gave me that letter. Lewis has got the letter outside.

Q. Go get it.

(Witness goes and gets letter.)

Q. Is this the letter which you showed to this watchman?

A. Yes.

Q. And did he release your clothes then?

A. No, he sent me up to Mr. Williams, Superintendent of the White Star Line and Mr. Williams, he could not get us to go through so he got on the phone to the Lamport & Holt Line Office and then he came back to us and said that we could pass.

Q. How long was he gone before he came back?

A. We went to see Mr. Williams ourselves.

Q. What did he ask you?

A. I just showed him that letter.

Q. Anything else?

A. No, he asked me why we wanted to get out of the ship. That is all.

[fol. 34] Q. Then, he gave you a pass for your clothes?

A. No, he never gave us a pass. There was another policeman up there and he sent him down with us to tell the watchman to let us through.

Q. And you took your clothes and left?

A. Yes.

Q. How about your discharge and passports?

A. I got my passport with me but my discharge book is with the captain or else he sent it to the British Consul.

Q. Where did you last see it?

A. In Manchester.

Q. In whose possession?

A. The Superintendent of the Shipping office in Manchester.

Q. Who took it?

A. These books go to the captain.

Q. Did you ever see it in the captain's possession?

A. No, sir. They customarily turn it over to the officer who signs you on.

Q. And they give it to the captain of the ship?

A. Yes.

Q. Now, did you ask for your discharge book?

A. No, I never asked him for it because I knew very well he would not give us it. He could not give it to us under the regulations of the British Shipping Act. He is not permitted to give it to you unless you are paid off and discharged before a Consul.

Q. Is that it?

A. Yes.

I will put the letter in evidence.

Q. How much did you have coming to you at the time you demanded half wages?

A. £2, 14s and 6d., but I am not certain.

[fol. 35] Q. Is that including the advance?

A. That is clear of the advance.

Q. That is not counting the advance as a payment? That is outside of the advance?

A. No.

Q. You got £2, 14s?

A. Yes.

Q. Is that the total due you or half?

A. Total, but I demanded half of that.

Q. Did you have any slops on the ship?

A. No, sir.

Q. You did not draw any slops?

A. Oh, tobacco, five shillings.

Q. You drew how much cash in New York?

A. Six or seven dollars. I forget now. It was either six or seven.

Q. You worked three weeks?

A. Yes.

Q. £10 10s?

A. Yes.

Q. How much does that amount to somewhere around in pounds for three weeks' wages? How many pounds?

A. £7, 4s.

Q. All that you had drawn was $6 and five shillings?

A. I could not say. You see, I was on two voyages.

Q. You drew this on one voyage and not on the other?

A. Yes, but I am not certain which it was.

Q. Assuming it was this and you drew five shillings, that would make it $7.25 altogether and your earned wages were $31.50, that would leave you about $24 balance?

A. Yes.

Q. Half of that would be $12 about?

A. Yes.

Q. That is not counting the advance at all?

A. No.

[fol. 36] Q. That is, we figure it as though the advance was never paid?

A. Yes.

Q. Did you ever make any previous demand in this port on this voyage for half wages?

A. No, sir.

Q. Subject ever mentioned by yourself or any other members of the crew in the way of a demand to the captain at any other time previous to this time. Had any of you made any demand for half wages?

A. To tell you the truth, one man, Clark did.

Q. But none of these men in this claim never made any claim for half wages?

A. Not that I know of.

Cross-examination.

By Mr. Dean:

Q. At the time you received from the master six or seven dollars, did you ask him for any more than that?

A. No.

Q. Do you remember what day of the week or what day you received this money?

A. About two weeks ago.

Q. That must have been about June 7th?

A. I could not tell you.

Q. Was it on a Friday or Saturday?

A. It was on a Saturday.

Q. Did you draw any pay after you went aboard the ship at Manchester or during the voyage?

A. No.

Q. Did you know this man, Thompson that cashed the advance note for you there?

A. Yes.

Q. How long did you know him?

[fol. 37] A. Well, I just know him as a casual acquaintance. Every seaman in Manchester knows him.

Q. Did he have a store there?

A. Yes.

Q. Did you buy things in his store?

A. Yes, such as oil skins and sea boots.

Q. When you cashed this advance note, did you buy anything at the time?

A. No.

Q. Did you owe him anything at the time you cashed it?

A. No, sir.

Q. Have you been to the British Consul to make a complaint?

A. No, sir.

Q. When you left the ship, you did not intend to return when you went off with your baggage?

A. No, I did not want to go back. There is no use for me to go to the British Consul. He is only good for the Lamport & Holt Office. If I would go there, he would tell me to get out of his office. That is what he would tell me. I was told to go ashore. This was my second voyage on the ship.

C. R. Shotton, being duly sworn, deposes and testifies as follows:

Direct examination.

By Mr. Axtell:

Q. What is your name?

A. C. R. Shotton.

Q. Where were you born?

A. Olderton.

Q. How old are you?

A. 23.

Q. How long have you been going to sea?

A. Five years.
Q. What country do you belong to?
A. England.
[fol. 38] Q. What were you on the Archimedes?
A. AB.
Q. What rate of wages?
A. £10, 10s a month.
Q. Where did you join and on what date?
A. Manchester, the 19th.
Q. When did you sign articles?
A. 17th.
Q. Did you get any advance?
A. £4.
Q. Are you married or single?
A. Single.
Q. In what form was the advance paid?
A. Paid in note. It is not cashed until after the ship leaves.
Q. When did you cash it and where?
A. Pawn broker.
Q. What was his name?
A. Thompson.
Q. What did you get for it?
A. £3, 12s.
Q. Did you get anything besides cash?
A. No, nothing besides cash. He took out the rest.
Q. Eight shillings?
A. Yes.
Q. Did you get any cash after you joined the ship?
A. No, not after.
Q. Did you get any at New York?
A. Yes.
Q. What date did you arrive here?
A. Arrived here on the 1st of June.
Q. What day after arrival did you draw any money?
A. Saturday.
Q. Any demand made for any draw or was it paid without any demand?
A. We all put in a list for money.
Q. Is that customary on a ship that comes in port?
A. Yes.

Q. You drew $6.00?
A. $3.00.
Q. All you got was $3.00?
A. Yes.
[fol. 39] Q. What did the rest of them get?
A. Some got $6 and some got $7.
Q. Did these other men draw at the same time, that are in this case with you?
A. Yes.
Q. The whole crew drew?
A. Yes.
Q. Every man besides yourself?
A. Yes. All those who wanted to.
Q. When did you next make any demand for wages?
A. After I had been to see you.
Q. What date was that?
A. 8th.
Q. Did you say anything to the skipper about drawing any money before you came to my office on that date?
A. No.
Q. What did you come here for?
A. Because the captain would not give us any money.
Q. How do you know he would not, if you did not ask him?
A. Because he told us on the previous draw that he would not give us any more money.
Q. On the previous draw, was anything said by anybody about half wages?
A. No, nothing said.
Q. Sure of that?
A. Yes.
Q. On this 8th, after you came here to get advice, what happened?
A. We asked him for more money.
Q. What did you say to him?
A. Lewis asked him if he could have some more money, so he said no, so Lewis handed him this slip.
Q. What slip?
A. This.
Q. Have you got one of them?
A. Yes.
Q. Let us see it?

Q. Did you have this slip at the time?

A. Yes.

[fol. 40] Q. Did you say anything about it?

A. He would not look at it. He only looked at one of the slips.

Q. What was said?

A. We just asked him for more money and he said he would not let us have any more.

Q. Did you say anything to him personally, yourself about this slip.

A. No, I did not say anything personally.

Q. You showed him the slip?

A. Yes.

Q. Did he look at it?

A. He looked at one slip, Lewis's.

Q. What did he say after that?

A. He would not have anything to do with it.

Q. What did he say. Do you remember his words, if he used any or what he did?

A. He just said, "Pooh."

Q. After that you left the ship?

A. The following day.

Q. Did you take your clothes off?

A. We could not get the clothes off that day.

Q. Held up at the dock?

A. Yes.

Q. You went to see the Superintendent?

A. Yes.

Q. Had a letter?

A. Yes.

Q. Did you get your discharge book?

A. No.

Q. Did you get your passport?

A. Yes.

Q. Have you made any demand upon the captain for your discharge book?

A. No.

Q. Where did you last see that book?

A. In the Shipping Office, in Manchester.

Q. In whose possession was it at that time?

A. Shipping master.

[fol. 41] Do you mean a Government official or do you mean some crimp. A shipping master here is a crimp. What do you mean by shipping master?

A. The master who signs you on the articles.

Q. That is an official from the Government?

A. Yes.

Q. From the Shipping Federation?

A. Yes.

Q. You are going to go to sea again?

A. Yes, sir.

Q. What kind of ships are you going on?

A. American ships.

Q. Are you going to stay in this country?

A. Yes.

Q. Are you going to get your papers out or not?

A. Yes.

Q. When did you make up your mind to become a citizen of this country?

A. When I left the ship.

Q. Have you any relatives in England?

A. Yes.

Q. Who are they?

A. All my relations are in England.

Q. Married or single?

A. Single.

Q. Your father and mother over there, I suppose?

A. Yes, sir.

Cross-examination.

By Mr. Dean:

Q. You have been around to see the British Consul?

A. No, not the British Consul.

Q. When did the master say that you could have but one draw at New York?

A. The voyage previous, he told us about that.

Q. Did he say anything about it this voyage?

A. Yes, he said, only one draw.

Q. When did he say that?

A. At the time we got our money.

[fol. 42] Q. At the time you got those $3.00 that you mentioned?

A. Yes.

Q. Did the captain state that you put in a list asking for the amount of money that you got at New York?

A. Yes.

Q. He told you to put in the list?

A. Well if the captain is willing to pay out the money, you put in the list.

Q. You did not see the list yourself?

A. I wrote my name on it.

Q. Did you put in how much you wanted?

A. Yes.

Q. $3.00?

A. Yes.

Q. That is all you got?

A. Yes.

Q. When did you next ask for pay?

A. After I had been up here on Thursday, five days afterwards.

Q. Why did you not ask the master before going up to Mr. Axtell's office?

A. Because I knew I would not get it.

Q. How did you know it?

A. He told us.

Q. When?

A. On the previous draw, he told us.

Q. Previous draw or previous voyage?

A. Previous draw.

Q. Who did all the talking to the captain?

A. Lewis handed him a slip and Wilson read out part of a letter.

Q. You made a voyage on the ship before

A. Yes.

Q. Did you have any trouble then?

A. No.

[fol. 43] Q. Was Lewis on that voyage?

A. Yes.

Q. I note that on Exhibit 4, on which appears your signature has the figures £3, no shilling and 9d. Who wrote those figures?

A. I wrote those figures.

Q. What do they represent?

A. That is half the money due me.

Q. Half the money?

A. Yes.

Q. And you figure then that the amount due you was—£6, 18d.

A. Yes.

Q. Did you take into consideration the advance?

A. Yes.

Q. You did not deduct the advance?

A. No. Half the advance is in this.

Q. You worked three weeks?

A. Yes.

Q. How much did you have coming to you for three weeks?

A. £7, 7s.

Q. Did you, in making your claim, deduct £4 from the £7 and something that you already earned.

A. I deducted what I had drawn. $3.00 and deducted half of the advance. That is $2. and five shillings for tobacco.

Q. Why did you deduct half of the advance?

A. Because it was a demand for half the money.

Q. I am talking about the £4, did you deduct half of that?

A. Yes.

Q. When you left the ship in New York, you did not intend to return?

A. No.

Q. You were through with the ship for good?

A. Yes.

Q. Had you dealt with this man Thompson before?

A. Yes.

Q. Buy things from him?

A. Yes.

[fol. 44] Q. Did you owe him anything when you cashed this £4 note?

A. No.

Q. Did you allot any of your wages for this voyage?

A. No.

WILLIAM LEWIS, being duly sworn, deposes and testifies as follows:

Direct examination.

By Mr. Axtell:

Q. What is your name?
A. William Lewis.
Q. How old are you?
A. 30, the 13th of June.
Q. Where were you born?
A. Douglas, Isle of Man.
Q. Where did you join the Archimedes?
A. Signed on the 17th day of May at Manchester and went aboard the 19th.
Q. Did the other men sign at that time?
A. Yes, sir.
Q. What wages were you getting?
A. £10 per month.
Q. What capacity?
A. Able bodied seaman.
Q. Quartermasters get ten shillings more?
A. Yes.
Q. Did you get any advance on joining?
A. Yes, sir.
Q. How much?
A. Four pounds.
Q. In what form?
A. Paper form.
Q. To whose order was the paper?
A. Anybody who like to cash it.
[fol. 45] Q. Was it made to cash or to your order?
A. To anybody who wanted to cash it. You had to pay so much a pound for cashing it. I paid two shillings.
Q. It cost you two shillings a pound to have it cashed?
A. Yes.
Q. How much cash did you get out of it?
A. £3, 12s.
Q. Where did you cash it?
A. Thompson.
Q. Did you get it before you joined the ship?
A. Yes.

Q. Had you earned any money at the time you got the note and cashed it?

A. No.

Q. Where were you living at the time?

A. In a suburb of Manchester.

Q. What kind of a place?

A. Sailor's home in Chester Road, Manchester.

Q. Did you pay any fee for getting the job?

A. No, sir.

Q. When did you arrive at New York?

A. Last Thursday a week.

Q. That would be the 1st of June?

A. Yes.

Q. Assuming that it was the 1st of June, when did you first get any money?

A. On the 3rd of June.

Q. What day of the week?

A. Saturday.

Q. What time of day did you get it?

A. About two o'clock.

Q. Who paid it.

A. The captain.

Q. How much did you get?

A. $3.00.

Q. Was any demand made by you or any others for half wages?

A. Not that day.

Q. When next did you draw any money in New York?

[fol. 46] A. I have never drawn any money in New York.

Q. Did you make a demand?

A. Yes.

Q. When was your next demand?

A. On the 8th.

Q. What time of day?

A. Ten past ten P. M.

Q. Night time?

A. Yes.

Q. What did the captain say?

A. He refused point blank.

Q. Did he say he would give it to you next morning?

A. No, sir. He refused.

Q. What did you show him?

A. I showed him this form. I put it in his hand and he read it over to himself.

Q. Was he sober; in his right senses at the time?

A. Yes, he was sober. He gave it to me back. I asked him what his intentions were for us to read a letter to him.

Q. Did he read the letter?

A. The captain did not read it, but Mr. Wilson read the letter (he's outside). He read the first paragraph and he said it applied to American ships only.

Q. And what else did he say?

A. I asked him if he would give us his definite word that he would give us money in the morning.

Q. Would you have been willing to wait until morning to get it?

A. Yes.

Q. What did you do after that?

A. I asked him if he would give me a pass to take our baggage ashore and the captain said, "I will give you no pass" I asked him if I could go to the chief officer for a pass and he said, "no, you will get no pass aboard this ship."

[fol. 47] Q. Did you get your discharge book and passport?

A. No, sir. I have my passport.

Q. Did you get your discharge book?

A. No.

Q. Did you ask for it?

A. No, sir.

Q. When did you see it last?

A. The day I signed.

Q. Who had it then?

A. The captain.

Q. Where at?

A. Manchester.

Q. What place?

A. The shipping office in Manchester.

Q. Did you know the custom with regard to these discharge books?

A. The custom is that the captain should keep these books until the ship pays off again, but if a man leaves in New York he generally hands them over to the Consul.

Q. You fellows are all claiming your waiting time, two for one until the account of wages is settled in pursuance of the terms of this libel?

A. That is right.

Q. How much time elapsed between your draw of $3.00 and the time that you demanded half wages?

A. Five days.

Q. Did you fellows have in mind the Seaman's Act when you made the demand five days after the first draw?

A. Yes, sir.

Q. Was anything said about half wages the first time you drew money?

A. No mention.

Q. Anybody else besides you that drew any money at that time?

A. Several persons drew money.

Q. Any officers?

A. I don't know whether any officer. All these men drew money and the majority of the ship's crew.

[fol. 48] Q. Is that customary.

A. After you get in port, it's customary on a British ship. You know Saturday night, you take in a show and a few other things.

Q. You only drew $3.00?

A. Yes.

Q. Married or single?

A. Single.

Q. Have you any relatives in England?

A. Yes, sir.

Q. Any over here?

A. No, sir.

Q. What are you going to do now. Are you going to stay here or go back.

A. Stay in New York City.

Q. What are you going to do?

A. I am going to go on American ships. Things are pretty bad in England, and here. I intend to stay ashore in the summer time.

Q. Are you going to report to the Immigration Authorities?

A. Yes.

Q. And get your papers?

A. Yes, at the first opportunity.

Q. Did you fellows have any money when you came ashore?

A. No, sir.

Q. You just walked ashore with your bags?
A. Yes.

Cross-examination.

By Mr. Dean:

Q. You have a job now?
A. Yes.
Q. What doing?
A. Painting.
Q. Regular work?
A. No, sir.
Q. What company?
A. Cunard Line.
Q. Work on board a ship?
A. Yes.
Q. British ships?
A. Yes, but it's American money that I work for.
[fol. 49] Q. You are working for a British Company.
A. I think it a Norwegian man that hired me.
Q. You don't mind seeing a British Flag on a Cunard Line?
A. No, I do not. The British flag looks all right when it's flying.
Q. How long had you been on the Archimedes?
A. Four trips.
Q. How did you happen to get dissatisfied all at once?
A. A new mate came around and he started to change all the rules and did not treat us right.
Q. Did he sign on at Manchester?
A. Yes.
Q. Did he have trouble with you?
A. Yes.
Q. What was the trouble?
A. He was nasty. He did not give us a square deal, changed the rules and made it awful for us.
Q. The other men in this case also had trouble with him.

By Mr. Axtell: I object because it calls for a conclusion.

A. Yes, there was all kinds of trouble.
Q. What did you do about it?

A. We had a half day off on the 8th and we came here to see if we could find out about the American rules a little more.

Q. What kind of American rules?

A. Demand for half wages.

Q. You did that because you had trouble with the chief mate?

A. Yes.

Q. In other words, you decided to go off the ship?

A. Yes. He told one of the men to go off.

[fol. 50] Q. Who?

A. Jackson.

Q. When?

A. 7th, and I was right there and he accused him of whistling and singing and he was doing nothing. He said, this is the captain's quarters and I don't want you whistling or singing or making any noise at all.

Q. Did anybody report the chief mate's conduct to the master?

A. Not to my knowledge.

Q. Did you personally have trouble with him or did you dislike him?

A. I had trouble with him.

Q. Did the other men have trouble with him?

A. Yes.

Q. Is that what caused you men to decide to quit the ship?

By Mr. Axtell: I object on the ground that there is no contention that the man had decided to quit the ship.

A. Well, I was taking it this way. I was getting out sooner or later to become an American citizen.

Q. And you thought this was a good time?

A. Yes.

Q. Because you had a chief mate on there whom you did not like?

A. Yes.

Q. Did you ask for more than $3.00 on June 3rd?

A. No, sir.

Q. Did you need any more than $3.

A. Not that day.

Q. And when did you next ask for pay?

A. On the 8th.

[fol. 51] Q. At what time?

A. 10:10 P. M.

Q. At night?

A. Yes.

Q. I understood some of these other men to say that it was at 10:30 A. M. Are you sure it was at night.

A. At night.

Q. It was not in the morning?

A. No.

Q. All of you men made the demand at the same time?

A. Yes.

Q. What were you doing at that time?

A. We had a half a day off.

Q. What did you do that half day.

A. We came down here.

Q. You were taking a half day off and at the same time learn something about the American law?

A. Yes.

Q. Who had charge of this party to come down here?

A. Mr. Wilson.

Q. Is he pretty good on Seaman's law.

A. No. I asked him to come down.

Q. From the time you drew $3 on Saturday June 3rd, until you came up to see Mr. Axtell, did you ask the master for any pay?

A. I never demanded half pay untl the 8th.

Q. That was after you had seen Mr. Axtell.

A. Yes.

Q. Why did you not go to the master before.

A. He told us that would be the last draw on Saturday, June 3rd.

Q. Did he tell you that before you put down the amount that you wanted?

A. No, sir. He told us that was the last draw.

Q. Where did you put on the amount that you wanted to draw?

A. On the paper.

[fol. 52] Q. On the same occasion did the master tell you that that was the last draw.

A. Two o'clock on Saturday, when I signed for $3.00 the captain told me "Now this is the last draw and don't ask for any more."

Q. Did you expect the master to pay you money at 10:10 at night when you went back to the ship.

A. No, we expected that he would give us a civil answer and also to say what he would do for us the next day.

Q. You were not surprised when he did not listen to the speech that Wilson made?

A. I was not surprised in the least.

Q. In fact you rather anticipated it?

A. We, we were kind of joking.

Q. Who made a speech on that occasion?

A. I made a speech.

Q. What did you say.

A. I asked him if he would give us some money. That was the only way I could spring it on him and he said, "no get out of here."

Q. Where was the master?

A. In the cabin. I knocked at the door and asked the chief steward if I could see the captain so the captain came out.

Q. What clothes did he have on?

A. Shore clothes.

Q. What else happened?

A. We asked him if he would give us some money and he refused point blank.

Q. Did you ask for it right then? What did you say.

A. We asked him for some money.

Q. Were any of you men drinking?

A. No, sir.

[fol. 53] Q. Was the master drinking?

A. No, sir.

Q. You had liquor on board?

A. I suppose.

Q. A British seaman on a British ship may drink liquor?

A. Yes, but——

Q. Who else besides yourself made speeches?

A. Mr. Wilson.

Q. Mr. Wilson had prepared the address which Mr. Axtell had written for him?

A. Yes.

Q. And he started to read it?

A. Yes, but the captain, he was kind of stamping with his feet and he would not listen.

Q. All of you men stayed on board that night?

A. Yes, we had to. We wanted to take our things ashore but we could not get a pass.

Q. When did you first take them?

A. Just after he refused the money.

Q. You took your things and prepared to leave the ship?

A. Yes, but we had no pass. The customs would not inspect the luggage that night and we had no pass to get out. The watchman would not let us go through so we decided to leave them by the Custom, but the watchman said, "No, take them aboard," so we had to take them aboard.

Q. You left the ship that night with your baggage intending to get out?

A. Yes.

Q. Did you intend to return to the ship?

A. No.

Q. What time next morning did you leave?

A. The watchman told us that night that the custom office would be open at 8 o'clock. We were there 8 o'clock and passed the custom house but we had no pass. We told Mr. Axtell we could not get our bags ashore. It was [fol. 54] already passed by the Customs but the watchman would not let us take them outside.

Q. What time did you get away from the ship that morning?

A. Eight o'clock.

Q. And your baggage was left on board?

A. Yes.

Q. Later on you got it?

A. Yes, in the afternoon.

Q. You did not do any work?

A. Yes.

Q. What time were you supposed to turn to?

A. Seven.

Q. Did you ask the captain for permission to leave?

A. No, sir.

Q. Have you been to see the British Consul about this?

A. No, sir.

Q. How much was your slop account at the time you left?
A. $3 and five shillings tobacco.
Q. You count the $3 that you drew?
A. Yes. That is all I had off the ship, $3 and five shillings tobacco.

By Mr. Axtell:

Q. Have you got a slip?
A. Yes, here it is.

(Marked as Exhibit 5.)

By Mr. Dean:

Q. I note on Exhibit 5 figures £3 no shillings and 9d. Who wrote these figures?
A. Myself.
Q. Did you deduct the advance from the amount that you had earned?
A. No, sir.
Q. How much had you earned up to June 8th?
A. £7.
Q. And you had already received £4. Did you deduct that?
A. No, sir.
Q. Why did you not deduct that?
A. Because it's not legal in this country.
[fol. 55] Q. Who told you?
A. Mr. Axtell, himself.
Q. You did not know that before?
A. I already knew it but I did not think it was enforced.
Q. You are pretty lucky?
A. Sure.

LIBELLANT'S EXHIBIT IN EVIDENCE IN DEPOSITION OF WITNESS JACKSON

Law Office of Silas Blake Axtell, 11 Moore Street, New York

June 8th, 1922. 5402.

To whom it may concern:

This is to certify that under the law of the United States, a seaman on foreign vessels while in the waters of the United States for the purposes of loading or discharging cargo, may demand and receive half wages due and unpaid. If the demand is refused, the contract is ended and the seaman may leave the vessel without interference taking all of his belongings with him including his passport, discharge books and other things. The Act is binding as the law of the place where the demand is made and is not governed by any foreign law as all treaties with foreign countries have been rescinded by the United States.

[fol. 56] In figuring wages due, advances paid in foreign ports before the wages are earned may not be considered as part of the wages paid by the ship. Such advance wages must be paid over again in the United States if the seaman desires and demands it. Unless the full amount of half of the balance of wages due and remaining unpaid including half of the demand, is paid, the seaman may leave the ship, and bring action to recover the whole of his wages and he will receive in addition two days for every day he is compelled to wait after forty-eight hours from the time he leaves the vessel.

Yours very truly, (Signed) S. B. Axtell.

LIBELLANT'S EXHIBIT IN EVIDENCE IN DEPOSITION OF WITNESS JACKSON

Law Office of Silas Blake Axtell, 11 Moore Street, New York

June 9th, 1922.

Customs officer or watchman in charge Pier 58, North River, New York City.

DEAR SIR: Bearers, five of the members of the crew of the "Archimedes," which now lies at your pier, are desirous

[fol. 57] of obtaining their baggage which is being held by you because of their failure to secure a pass from the master of the ship. As I understand, these bags have been duly inspected by the Customs Officer, and are O. K. in that respect.

I wish to state that no seaman's baggage can be held up in this country. That these men have a right to go ashore with their clothes and remain in this country, for the purpose of reshipment which they intend to do immediately. They are leaving the vessel because of an infraction of the Seaman's Act, to-wit: the failure of the master to pay them half wages now due, and under the same act, they are within their rights if they take their clothes and leave the vessel. I merely wish to call your attention to the fact that you are exceeding your authority by retaining the clothes of these men at the dock, and refusing to allow them to take them out.

Very truly yours, (Signed) Silas B. Axtell.

LVA/FL.

[fol. 58] DEPOSITION FOR CLAIMANT

[Title omitted]

Deposition on Behalf of the Claimant, Taken at the Office if Messrs. Burlingham, Veeder, Masten & Fearey, 27 William Street, July 19, 1922

Appearances: Messrs. Burlingham, Veeder, Master & Fearey (Mr. Dean) for claimant; Silas B. Axtell, Esq., for libellants.

It is stipulated that the testimony may be taken by a stenographer, signing, filing and certification being waived, stenographer's fees to be taxable.

GEORGE BLACKER, being duly sworn and examined as a witness for the claimant, testifies as follows:

By Mr. Dean:

Q. How long have you been going to sea?

A. All my life, 35 years.

[fol. 59] Q. What certificate do you hold?

A. British master's.

Q. How long have you held it?

A. Held two, the last one 1901.

Q. Were you master of the steamship Archimedes during the voyage which commenced May 19, 1922, from Manchester to New York?

A. Yes.

Q. She is a British ship?

A. British ship.

Q. How long have you been master of the Archimedes?

A. Three years, a little over three.

Q. Did you sign a crew on at Manchester?

A. Yes, to be on board June 19th.

Q. May or June?

A. May 19th.

Q. Did they sign British shipping articles before a shipping master?

A. Yes.

Q. When did you arrive at New York?

A. June 1st.

Q. When in the course of the voyage did the crew first draw pay?

A. They had the usual advances by the Board of Trade in England before joining, to be paid three days after the ship leaves port.

Q. Then when did they draw pay?

A. June 3rd.

Q. Where?

A. New York.

Q. What day of the week was that?

A. Saturday.

Q. Do you recall John James Jackson, William A. Wilson, Christopher R. Shotten, William Lewis and Thomas W. Hooper, members of the crew?

A. Yes, sir.

Q. Did they draw pay on Saturday, June 3rd?

[fol. 60] A. On Saturday, June 3rd, they drew pay to any amount they asked for.

Mr. Axtell: I move to strike out the latter part of the answer.

Q. Will you say just what you told the men before they drew pay on Saturday, June 3rd?

A. I told them they could have any reasonable amount as long as it was due them, I had only one request, that they take it all at one time instead of bothering me.

Q. Is that the custom on that ship to permit only one draw while in port?

A. That is the usual custom.

Q. Had you previously announced that rule to the crew?

A. Yes, and it is well understood, all the men had been in the ship more than one voyage, some two or three years.

Mr. Axtell: I move to strike that out as a conclusion of the witness.

Q. Had the men whose names I have just mentioned and who are the libellants in this suit made previous voyages on the Archimedes?

A. They had all made a previous voyage, some had made several.

Q. You say you had announced on previous occasions that you would pay their wages only once while in port?

A. Yes, and the ship had made nine voyages and on only one occasion did I pay twice, then I told them it was the last time, from this out draw everything you want on Saturday.

Q. Did the libellants ask for wages and receive the [fol. 61] amounts they asked for on this occasion?

A. Yes, whatever they asked for they received.

Mr. Axtell: Objected to as leading.

Q. Have you in your possession statements showing the wages, earnings and deductions of the libellants for the voyage in question?

A. Yes, I have the originals.

Q. Do they bear the signatures of the libellants?

A. Yes.

Q. Is there a separate sheet for each man?

A. A separate sheet for each one.

Q. And is there annexed to each the advance note which he received at Manchester?

A. Prior to joining, yes, that is annexed to the original.

Mr. Dean: I offer the papers in evidence.

They are marked Claimant's Exhibit A.

Mr. Axtell: No objection except that we don't admit the accuracy of the conclusions set forth by the master in his accounts appended to the advance notes, they may be accurate, I don't know.

A. All those articles have been gone over by the shipping master at Manchester.

Q. Captain, do all these advance notes bear on the back the signature of the man who received the advance note?

A. Yes, and there is a clause there that the man must understand when he is signing at the back that he is allotting his money to the person that he names on the back.

Q. Do the sheets headed "Master's Book" (§133 M S A 1894) also bear the signature of each man opposite the [fol. 62] amount in dollars which he drew at New York on June 3, 1922?

A. Yes, the amount in dollars turned into English money at the rate stamped by the British consul, current at the time.

Q. I notice the item "tobacco," what does that represent?

A. Tobacco supplied on the voyage that is supplied by the steward which he keeps in his own book and they sign for it in that book.

Q. I see an item "Unemployment," what does that mean?

A. That is a British law, same as a national insurance, the man paid so much, 5d or 8d.

Q. Is that deducted from the man's wages by virtue of the British law?

A. By virtue of the British law.

Q. There is also an item "Deduction for Health Insurance," what is that?

A. The same.

Q. A similar deduction required by British law?

A. By British law.

Q. Did the libellants make a second demand for wages while the vessel lay in New York?

A. Yes, on June 8th, at 10 p. m. they came to me and asked for more money.

Q. What did you say to them?

A. I told them as they had already had one issue and I asked them to demand what they wanted and as I had

already given them in some cases more than was due I refused to give them any more.

Q. Have you a statement showing the balance due each man after he had drawn wages on Saturday, June 3rd?

[fol. 63] A. Yes, my custom is to rough out what the man has had and what is due—it is never very much, if he has $5 due to him when he comes in and asks for $4 he can have it, if he asks for $5, he can have it; I have always that in front of me.

Q. Will you state in respect of each of the libellants the balance of wages due him after he had drawn wages on Saturday, June 3rd?

A. Yes, because it is all in the wage book.

Q. Just name the balances due each of the libellants if you have a record of them, just read the totals off, that is all we are interested in?

A. Arrived in port——

Q. Just the total is all that I want, you have I believe prepared another statement showing the details?

A. On arrival of the ship Jackson £4:13:4, he had already drawn £4:13:6 and was indebted to the ship two pence.

Q. Read the others off, also.

A. That is on arrival of the ship on the 3rd.

Q. State what is due on the 3rd and the balance due after his draw on the 3rd?

A. On the 3rd at the time of giving these two days after arrival he had £5:6:8 due him, he had already drawn £4:13:6, I gave him an issue of £1:11:6.

Q. Have you prepared a separate sheet for each of the men showing the amount each man had earned up to and including Thursday, June 8, and also showing the amount of deductions?

A. Yes.

It is stipulated that these five papers in red ink prepared by the master can go in as his statement of their ac-

[fol. 64] counts up to and including June 8th, the day they made their demand for half wages.

Mr. Dean: I offer it in evidence.

It is marked Claimant's Exhibit B.

Q. Captain, what does the first line in the column at the right represent—I show you statement of Jackson's earnings and ask you what the first line of figures £4:13:4 at the right represents?

A. Wages due to him on arrival of the ship at New York, June 1st.

Q. What is the second line, £5:6:8?

A. The total wages due to him when the first issue of money was given to him.

Q. What does the third line, £7, represent?

A. The total earnings on June 8th, when he left the ship.

Q. What do the figures £6:10 at the lower lefthand represent?

A. Total deductions from his total earnings including advances, stores and cash supplied in New York.

Q. When you returned to the vessel on the night of June 8th, who acted as spokesman for the libellants?

A. Lewis and Jackson.

Mr. Axtell: Objected to as a conclusion.

Q. What did they say to you and you to them?

A. When I came aboard at 10 o'clock they asked if I would give them some more money. I told them they had already had more than they were entitled to in some cases and refused to give them more, they asked me if I would read a typewritten paper they had, I didn't feel inclined [fol. 65] to do so and declined, however, they were rather keen on it and I said, "All right, to please you I will," but I didn't read it myself because I had not my glasses with me but I allowed them to read to me, as soon as they started I knew it was the United States law regarding a British ship which I already knew.

Q. What did the men do after you refused to pay them anything?

A. Then they asked me pointblank if I refused to give them any more money; I said, "Yes, I absolutely refuse." Then they said, "By this paper we can take our clothes ashore?" I said, "Yes, but I strongly advise you not to do so." I asked them to sleep over it and come and see me in the morning.

Q. What did they do then?

A. That was about a quarter past 10, I suppose, about half-past 10, all their clothes I saw them taking over the gangway, but I had previously sent up to the gate and stopped their clothes going through, thinking that if they would sleep over it they would think better of it in the morning. However, between 8 and half-past in the morning I saw them going away and didn't bother with them.

Q. Did you mark them as deserters in the log book?

A. Then I made up their accounts and went to the British consul, told him about the matter and wrote them off as deserters. The ship was clearing to sail next day. I had to ship new men in their places.

Q. Did you make any entry in the ship's log marking them as deserters?

[fol. 66] A. Made an entry in the official log book and took it up and had it stamped by the British consul.

Q. How much time elapsed from the time the men left you on the ship that night until you saw them leaving the ship with their belongings?

A. About half-past 10.

Q. How much time from the time they left you until you saw them leaving the ship?

A. About a quarter of an hour or 20 minutes, no more than 20 minutes.

Cross-examination.

By Mr. Axtell:

Q. Captain, I show you a photograph of these men, will you take a pen and mark the name of each man on it, which ones they are?

A. Mark it on here?

Q. Just write on the face of the photograph, just on their breasts, I guess is as good a place as any.

Witness does as requested.

Q. Now, was it a paper something like this that they showed you (showing witness paper)?

A. Yes, this was one kind. I think one was a longer sheet.

Q. Who was it that had the paper in his hand when he first addressed you, which one?

A. Seemed to me several of them had a paper but Wilson was the man that read the extract.

Q. You understood it was in demand for half wages, didn't you?

A. For some money.

Q. Here is Wilson's slip—is that the one he was asking you to look at?

[fol. 67] A. Yes, that would be all right but this had already been paid, half of this before he left home, or in Wilson's case—he was the best of the lot—he had already drawn two but I had already given him two, he had more than half of his wages already.

Q. My question is, is that the paper?

A. To tell the truth, I didn't have my glasses with me and couldn't see it.

Q. Do you recall his stating that they demanded half wages under § 4530?

A. No, they never demanded half wages, only asked for more money.

Q. They had a slip similar to this?

A. Yes, similar slips.

Q. And offered them to you, did they not?

A. Yes.

Q. And you refused to take them?

A. I didn't refuse, I asked them to read them to me as I hadn't my glasses with me.

Q. They did read these?

A. No, they read the larger sheet, reading something like the crew of a British ship when they arrive in American port can claim half wages—of their total wages and if I didn't give it to them they could take their clothes ashore.

Q. Did they inform you that under this law advances made in England before joining the ship, before the wages were earned were not valid payments under the laws of the United States in any controversy here?

A. No, they never mentioned that.

Q. Is this the letter they were reading to you?

A. Yes, the first part of that they read to me.

[fol. 68] Q. What did you say?

A. That I had already given them and complied with the British laws and American laws. I refused to give them any more.

Q. Well, they had these other slips at the same time?

A. They had the slips at the same time.

Q. Referring to Plaintiffs' Exhibits 1, 2, 3, 4, 5, half wages demand?

A. Yes.

Q. Now it has been customary for many years to advance wages to crews upon joining in England, has it not?

A. Yes, away back in Nelson's time.

Q. All over the world?

A. Yes, they must, otherwise the people could never live, we are sometimes away for a year, what are their people going to do when we are on long voyages?

Q. There is a difference between cash to a seaman and payment to a relative, is there not?

A. A seaman by British law can leave a month's advance, paid three days after leaving or leave an allotment to be paid weekly to his wife, sister, mother or any blood relative.

Q. These papers that you have identified as advance notes of these seaman are not allotment notes, are they?

A. Those are advance notes.

Q. You understand there is a distinction between an advance note and an allotment note?

A. Yes.

Q. And you understand I take it from your statement to them and here, that while American law recognizes the validity of the allotment note to a relative, it doesn't recog-[fol. 69] nize the validity of an advance note to a seaman himself, you understood that, did you not? Do I make myself clear to you?

A. Not quite, sir.

Q. I will state it again—did you understand at that time that you had the conversation with these men on deck when they were asking for half wages, that while an allotment note as you have described it, is valid according to American law, an advance note is not?

A. I understood that the advance note was just as valid as the allotment.

Q. You thought one was just as good as the other in England or the United States?

A. Yes.

Q. You know the second part of this letter reads "In figuring wages due, advances paid in foreign ports before the wages are earned may not be considered as part of the wages paid by the ship, such advance wages must be paid over again in the United States if the seaman demands it and desires it," do you understand that?

A. I think this was all in force some years ago, during the war, the British consul explained it to me and all its bearings on a British ship.

Q. You didn't know that the statute had been amended since the British Government took the matter up to the Supreme Court of the United States?

A. Yes, I think I did, that last amendment, and it was explained to me by the British consul three years ago.

Q. The amendment wasn't passed until June 5, 1920?

A. He explained to me what I had to do.

[fol. 70] Q. If you had known that according to the American law advances you made as indicated by these notes in England were invalid, that is unlawful, not recognized by law here as valid tender—the same as counterfeit money, would you have paid them the difference?

Mr. Dean: I object to Mr. Axtell's statement of the American law.

A. Even so I can't pay any amount to a man which has already been paid by my owners—if I did——

Q. Irrespective of the law you wouldn't have paid them over again without definite instructions from the owners or the British consul?

A. Unless I had definite instructions from my owners.

Q. No matter what the law was in this country?

A. No, if I do my owners will make me pay the difference and I don't feel inclined to.

Q. The first time these boys drew money they got it as it was advanced to all the crew on arrival?

A. Yes.

Q. It is customary on all the ships in every trade and every port of the world to have the mate or first assistant engineer go around and ask the men how much do you want to draw, something like that, isn't it?

A. Well, as a rule they mostly send in a list.

Q. Somebody prepares a list?

A. That is right.

Q. It is sent to the master?

A. It is sent to the master through the steward.

Q. If the list doesn't call for too much in the master's [fol. 71] judgment he pays in accordance with the request?

A. Yes.

Q. That has been the practice in ships for many years?

A. Yes.

Q. Long before the Seaman's Act of the United States was created, isn't that so?

A. That is so.

Q. Was there any mention of the half wage law or American law on the first draw?

A. No, just the list came.

Q. Nothing said about the half wage law?

A. Nothing said till June 8th.

Q. Till the second time?

A. Till the second time.

Q. Then you felt that because they had this advance and had already drawn more than half that you were not going to pay any more?

A. That I couldn't pay any more.

Q. You did refuse?

A. Absolutely refused to pay any more.

Q. You told them to think it over over night, that it would be foolish to quit the ship and maybe in the morning they would feel differently, but they didn't?

A. I have been over 3 years in the ship, they knew I would sooner give them a day's pay than take it from them.

Q. Were they competent men in their departments?

A. Yes, I should say so.

Q. As good as the average?

A. Yes, we took them back the second voyage, if they were not good we would not have taken them back the second time.

[fol. 72] Q. If they were not satisfactory?

A. If they were not satisfactory.

JOHN CUSICK, being duly sworn and examined as a witness for the claimant, testified as follows:

By Mr. Dean:

Q. Were you boatswain on the Archimedes during the voyage from Manchester to New York which commenced in May, 1922?

A. Yes, sir.

Q. Do you recall John James Jackson, William A. Wilson, Christopher R. Shotten, William Lewis and Thomas W. Hooper members of the crew who left the ship?

A. Yes.

Q. Had these men previous voyages on the Archimedes?

A. Yes, all of them at least one and some had made several previous ones.

Q. Do you recall the men drawing pay the first Saturday after arriving at New York?

A. Oh, yes.

Q. What were they told at that time by the master concerning drawing pay?

A. I believe they were—I wasn't personally concerned in that, I didn't draw any myself.

Q. What is the rule on the Archimedes?

A. To get all you want in the first draw.

Q. And only one draw in port?

A. Only one draw in port, that is a rule of 3½ years.

Q. You have been on the ship how long?

A. Three years and four months—five months.

[fol. 73] Q. Do you remember seeing the libellants on Thursday night, June 8th, on board?

A. Yes.

Q. Where did you see them?

A. I saw them in the midship part waiting for the captain.

Q. Did you say anything to them?

A. Asked what they were waiting for and they told me they were going to get paid off or words to that effect, they were going to get paid off, and I said I didn't think they would, they said they would.

Q. Did they say anything about working the next day?

A. I said we will see what tomorrow morning says and

one fellow says you will only have two in the morning, he was quite correct, I had only two men.

Q. What two men did you have?

A. Gunn and Clark.

Q. Did the libellants Jackson and the others quit the ship?

A. No, I left them standing there, that was 7 o'clock Thursday evening.

Q. Did they work next morning?

A. No, they told me 9 o'clock next morning they weren't going to work, they said they would have to see the captain in the morning, the captain had told them to sleep over it and see him in the morning, they said in any case they were not going to work, they told me, each of the five men themselves personally, I asked each man personally so there is no getting away from it.

Cross-examination.

By Mr. Axtell:

Q. This conversation you had with them was after they had seen the skipper?

A. No, before they had seen the captain.

[fol. 74] Q. You stated that the captain told them he was going to see them in the morning?

A. I didn't state the captain told them he was going to see them in the morning.

Q. What did you say about their sleeping over it?

A. They told me at 7 o'clock Friday morning when I went to start them to work that they were going to get out of the ship, going to get paid off.

Q. That was the next morning?

A. They had been to see the captain the evening before sometime after 10 o'clock and the captain didn't have anything to say or something to that effect and they were not going to work.

Q. Did they say anything about the American law?

A. No, only said they had been to see you I believe and they were going to get paid off.

Q. Did they mention my name?

A. Yes, your name was mentioned two or three days before.

Q. When was that?

A. Friday morning at 7 o'clock.

Q. When was it they asked the captain for half wages?

A. I don't know, I didn't hear them but I believe 10 o'clock that night when they took a note from you they went to the captain.

Q. They went to my office in the morning for advice?

A. That was Mr. Jackson.

Q. Then they returned that night, is that it?

A. Oh, by the way——

Q. He returned that night?

[fol. 75] A. Returned at noon and had his dinner—by the way in what regard did Mr. Jackson come off for advice, on what subject, if you don't mind my asking, there was no dispute until then?

Q. I don't mind telling you he came to ask if he could claim half wages in an American port and I said he could.

A. That is what made me ask you that question.

Q. He didn't say anything bad about the boatswain?

A. They can't, I treat every man fair and square, the reason I asked the question is that the men were contented until Jackson came aboard that noon.

Q. You mean they hadn't said anything to you?

A. I believe the men were bona fide enough, they would have returned to the ship.

Q. When did you first learn they had been to see the skipper about getting more money?

A. I didn't learn it until Friday morning that they had seen him but I knew they were waiting in the evening at 7 o'clock.

Q. What day was it that Jackson went ashore?

A. Thursday at 8 o'clock in the morning he stopped his work—at half past 7 in the morning.

Q. When did they leave the ship?

A. On Friday morning at breakfast time.

Q. Jackson went ashore Thursday morning?

A. Yes, at breakfast time.

Q. You say you noticed excitement among the other men that afternoon after he returned?

A. The men worked until dinner.

Q. Then they had some conference with the captain that evening?

A. Yes, but the only men had any conference with the [fol. 76] captain until the evening,——

Q. That you know about?

A. I do know, I was on board until 7 o'clock in the evening.

Q. Were you present at the conference between the men and the captain?

A. No, I was not.

Q. Well, the next morning you had this conversation that you told Mr. Dean about?

A. Yes.

Q. With the men, that was 7 o'clock in the morning?

A. Yes, when I went to start them to work.

Q. They said at that time the captain had refused to do anything, told them to think it over but they decided they wouldn't stay?

A. They wouldn't stay.

Q. They were going to leave?

A. They were going to leave, in fact they were packed up and returning their bedding before the captain was out of bed in the morning, they were returning their bedding to the chief steward, it belongs to the ship.

Q. They were not going to take the ship's stuff?

A. No.

Q. You tried to stop them from taking their clothes?

A. I told them I thought they were silly.

Q. You tried to stop them?

A. No, if a man thinks he will better himself let him go.

Q. Didn't the captain instruct you to inform the captain at the dock not to take their clothes off?

A. No, sir, he did not.

[fol. 77] Q. The captain said he told somebody, do you know who it was?

A. No, sir, I don't.

Q. Nothing about it?

A. No, but I knew a couple of days before some of them——

Mr. Axtell: Move to strike that out as not responsive.

Redirect examination.

By Mr. Dean:

Q. How long does it take a seaman ordinarly to pack up his stuff?

A. I should think he couldn't do it under one hour at the very quickest, I mean to go around and gather up his things and put them away.

By Mr. Axtell:

Q. When did you first notice them packing their things?

A. I didn't notice but I was told by one of the seaman they started after tea.

By Mr. Dean:

Q. What day?

A. Thursday evening before I went on shore.

By Mr. Axtell:

Q. Shortly after they saw the captain?

A. No, before, they didn't see the captain till 10 o'clock or after and Thursday evening they had already packed their things according to the boy who cleans up for them.

Q. You didn't see any of that yourself, you don't know anything about it?

A. No, didn't see it myself.

Q. You were told?

A. I was told.

[fol. 78] By Mr. Dean:

Q. They did tell you Thursday night that they wouldn't work the next day?

A. Told me there would only be two men working the next day.

Q. And that they would not be the two men?

A. They told me the two who would be working and they were the only two left, they were 8 men, one a night watchman and 7 working and there would be only 2 left.

IN UNITED STATES DISTRICT COURT

[Title omitted]

Silas B. Axtell, proctor for libellants,

Burlingham, Veeder, Masten & Fearey, proctors for claimant; William J. Dean, advocate,

Frederic R. Coudert and Howard T. Kingsbury, counsel for the British Embassy in the United States, as amici curiæ.

[fol. 79] OPINION

AUGUSTUS N. HAND, District Judge:

The libellants are seamen who received advances upon their wages while in a British port. The ship was British, they signed the articles in Manchester, England and each received an advance of wages before sailing. When they reached New York they demanded a sum as half wages based on a calculation which disregarded the advance in the foreign port, and the demand having been refused left the ship and filed this libel for full wages and a statutory penalty,

I shall not discuss the testimony of the seaman Lewis which furnishes considerable basis for supposing that the demand for half wages was not made in good faith, but only as a means whereby these somewhat dissatisfied seamen might desert the ship and at the same time not lose the balance of their wages. The Tairoa, 297 Fed. 449; The Belgier, 246 Fed. 966. The libel must in any event be dismissed because the Jones Act does not cover the payment of advance wages on a foreign ship in a foreign port. This was settled by the decision in Sandberg v. McDonald, 248 U. S. 185, construing Section 11 of the Seamen's Act of 1915. But for the Amendment of 1920 there could be no question that an advance made to a seaman in a foreign port cannot be treated as invalid here if valid, as in this case, when made. After the decision of the Supreme Court in Neilson v. Rhine Shipping Co., 248 U. S. 205, which con-

[fol. 80] hibiting advance payment of wages when made by an American vessel to secure seamen in a foreign port the

Act was amended so as to embrace the words which I have underscored and to read as follows:

"(a) It shall be, and is hereby made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of the section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than $25 nor more than $100, and may also be imprisoned for a period of not exceeding six months at the discretion of the court. The payment of such advance wages or allotment, whether made within or without the United States or territory subject to the jurisdiction thereof, shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive either directly or indirectly, from any seaman, or from any person on his behalf, any remuneration whatever for providing [fol. 81] him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than $500.

"(e) This section shall apply as well to foreign vessels while in the waters of the United States, as to vessels of the United States, and any master, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent, of a vessel of the United States would be for similar violation.

"The master, owner, consignee or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance

shall be granted any such vessel unless the provisions of this section have been complied with."

It is contended on behalf of libellants that the amendment of the former clause by the insertion of the words "whether made within or without the United States or territory subject to the jurisdiction thereof" shows that Congress intended to forbid advances by foreign vessels in foreign ports. But the later clause (e) providing that: "This section shall apply as well to foreign vessels while in the waters of the United States, as to vessels of the United States" was in the section before amendment and [fol. 82] remained after amendment. The words "as well to foreign vessels while in the waters of the United States as to vessels of the United States" have no qualifying meaning if the section has the same bearing on foreign as on American vessels. It seems more logical to suppose that the words "whether made within or without the United States" were inserted in order to prohibit advances to seamen on American vessels, though made in foreign ports, and to avoid the effect of the decision of the Supreme Court in Neilson v. Rhine Shipping Co., 248 U. S. 205, which held such advances permissible. Clause (e) retained in Section 11 of the Jones Act still permits advances on foreign vessels in foreign ports.

It is true that in Strathearn S. S. Co. v. Dillon, 252 U. S. 348, it was held that half wages wherever earned might be demanded in an American port by a seamen on a foreign vessel and "if the master should refuse to pay them the seaman would be entitled to full payment of wages earned." But Sec. 4530 of the Revised Statutes, as amended, which became Sec. 4 of the Seaman's Act of 1915, provided:

"That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

The court said, at p. 355:

"In the case Sandberg v. McDonald, 248 U. S. supra, we [fol. 83] found no purpose manifested by Congress in Sec. 11 to interfere with wages advanced in foreign ports under

contracts legal where made. That section dealt with advancements, and contained no provision such as we find in Section 4. Under Section 4 all contracts are avoided which run counter to the purpose of the statute."

The libel is dismissed with costs.

A. N. H., D. J.

July 29, 1925.

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE ORIGINAL EXHIBITS

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that all the [fol. 84] original exhibits submitted at the trial of this action need not be printed but may be handed up by either party on argument.

Silas B. Axtell, Proctor for Libelants. Burlingham, Veeder, Masten & Feary, Proctors for Claimant.

Dated New York, December 14th, 1925.

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of said District Court in [fols. 85 & 86] the above-entitled matter as agreed on by the parties.

Silas B. Axtell, Proctor for Libelants. Burlingham, Veeder, Masten & Feary, Proctors for Claimant.

Dated New York, Jan. 30, 1926.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 87] IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT—September 28, 1925

This cause having duly come on to be heard before the Honorable A. N. Hand, District Judge, on the pleadings and proofs and having been argued by the advocates for the respective parties and the Court having rendered its decision in writing that the libel should be dismissed with costs; and claimant's costs having been duly taxed in the sum of $61.60,

Now, on motion of Burlingham, Veeder, Masten & Fearey, proctors for the claimant herein, it is

Ordered, adjudged and decreed that the libel herein be and the same hereby is dismissed with costs; and it is further

Ordered, adjudged and decreed that the claimant, Lamport & Holt, Ltd., recover of and from the libellants John James Jackson, William A. Wilson, Christopher R. Shotton, William Lewis and Thomas W. Hooper, the sum of $61.60 its costs as taxed; and that it have execution therefor.

Augustus N. Hand, U. S. D. J.

[fol. 88] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1925

No. 366

Argued April 22, 1926. Decided May 3, 1926

JOHN JAMES JACKSON et al., Libelants-Appellants,

v.

STEAMSHIP ARCHIMEDES, LAMPORT & HOLT LINE, LIMITED,

Claimant-Respondent

Appeal from the District Court of the United States for the Southern District of New York

Before Rogers, Hough, and Mack, Circuit Judges

OPINION

Silas B. Axtell, of New York City (John W. Davis and James M. Nicely, both of New York City, of counsel), for appellants.

Burlingham, Veeder, Masten & Fearey, of New York City (Van Vechten Veeder and William J. Dean, both of New York City, of counsel), for respondent.

Frederic R. Coudert and Howard Thayer Kingsbury, both of New York City, for British Embassy, amici curiæ.

Per CURIAM:

Decree affirmed, on the opinion of Judge Augustus N. Hand in the court below.

[fols. 89 & 90] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

JUDGMENT—May 10, 1926

Appeal from the District Court of the United States for the Southern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York and was argued by counsel.

On consideration whereof it is now hereby ordered, adjudged, and decreed that the decree of said District Court be, and it hereby is, affirmed with costs.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

H. W. R. C. M. H.

[fol. 91] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 91] IN SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 25, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.